

WOOD CRAPO LLC  
Mary Anne Q. Wood (#3539)  
Kathryn Ogden Balmforth (#5659)  
500 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 366-6060

SEARCHED 22 P 3:25  
SEARCHED AND INDEXED  
BY: \_\_\_\_\_  
DEPUTY CLERK

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331 and  
1441(a),(b), and (c) Defendant Kmart Corporation hereby removes to this Court the state  
action described below.

1. On December 2, 2004, a Complaint and Jury Demand, entitled *Roll v. Kmart Corporation et al.*, and originating from the Third Judicial District Court, in and for Salt Lake County, State of Utah, was served, along with a Summons, on Kmart Corporation

at its international headquarters in Troy, Michigan. A true and correct copy of the Summons and Complaint is attached hereto as Exhibit A and incorporated by reference.

2. On December 7, 2004, Kmart received a copy of an Amended Complaint and Jury Demand. A true and correct copy of the Amended Complaint is attached hereto as Exhibit B and incorporated by this reference. The Amended Complaint shall hereafter be referred to as the State Court Action.

3. This Notice of Removal is filed within 30 days of the receipt of the Complaint by service or otherwise. 28 U.S.C. § 1446(b).

4. Upon information and belief, Lydia M. Roll is an individual residing in Salt Lake County, Utah.

5. Defendant Kmart Corporation is a company incorporated in Delaware and having its principal place of business in Michigan.

6. Upon information and belief, Defendant Palmer, Reifler & Associates, PA, is a company incorporated in Florida and has not been served with a copy of either the Complaint or the Amended Complaint.

7. The State Court Action is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331, and is one that may be removed to this Court pursuant to 28 U.S.C. §§ 1441(a)-(c) because it is a civil action over which this Court has original jurisdiction and one that arises under the Constitution, laws, or treaties of the United States.

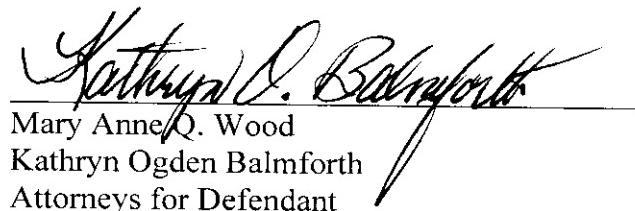
8. In the State Court Action, Plaintiff states that “[t]his suit is for state tort claims, state statutory punitive damages, and violations of the federal Fair Debt Collection Practices Act[, 15 U.S.C. §§ 1692 *et seq.*]” (Amended Compl. ¶ 5.) This Court has original

jurisdiction over claims under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k(d), and may also consider the state law claims pursuant to 28 U.S.C. § 1441(a)-(c).

9. The removal of this action from state court is not prohibited by 28 U.S.C. § 1445.

DATED this 23d day of December, 2004.

WOOD CRAPO LLC

  
\_\_\_\_\_  
Mary Anne Q. Wood  
Kathryn Ogden Balmforth  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22 day of December, 2004, I caused to be mailed in the U.S. mail, postage prepaid, a true and correct copy of the foregoing **Notice of Removal** to the following:

Gregory B. Smith  
Attorney for Plaintiff  
180 South 300 West #170  
Salt Lake City, UT 84101



2004 JUL 13 AM 1:49

Gregory B. Smith #6657  
 Steven C. Russell #6791  
 Attorney for Plaintiffs  
 180 South 300 West #170  
 Salt Lake City, UT 84101  
 Phone # (801) 532-5100

THIRD DISTRICT COURT, COUNTY OF SALT LAKE  
 STATE OF UTAH

Lydia M. Roll, Plaintiff vs.  Kmart Holding Corp, a Delaware corporation; Palmer, Reifler and Associates, PA, a Florida company; Briant J. Farnsworth, II, Defendants	COMPLAINT AND JURY DEMAND  Case <u>C40104822</u>  Judge <u>ROTH</u>
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Plaintiff complains as follows:

VENUE AND JURISDICTION

1. Plaintiff is a resident of Salt Lake County, Utah.
2. Defendant Kmart Holding Corp. is a Delaware corporation doing business in Utah as Kmart.
3. Defendant Palmer, Reifler and Associates, PA ("PRA") is a Florida law firm that collects debts in Utah.
4. Defendant Briant J. Farnsworth, II is an attorney employed by PRA and admitted to the Bar in Utah attempting to collect a debt in Utah.
5. This Court has personal jurisdiction over the parties.
6. This suit is for state tort claims, state statutory punitive damages, and violations of the federal Fair Debt Collection Practices Act (FDCPA).
7. This Court has subject matter jurisdiction.

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#### GENERAL ALLEGATIONS

8. Plaintiff was an employee of defendant Kmart Holding Corp. ("Kmart").
9. During her employment, Plaintiff would frequently place clearance merchandise on layaway in her name.
10. These items where stored in the stock room.
11. On one occasion, she put some clothes from the clearance sale area on layaway, paying \$15 down.
12. These items were stored in the stock room.
13. Plaintiff forgot about these items and they went into delinquent status and the layaway was canceled.
14. Some time later, she put the items back on layaway, this time in her daughter's name and again put \$15 down.
15. Plaintiff was subsequently accused of merchandise theft by employees of Kmart, fired, and reported to the Murray City Police.
16. Plaintiff did not steal anything from Kmart.
17. On, or about June 10, 2004, Defendants PRA and Farnsworth sent a letter to Plaintiff demanding \$4,338.41 attached as Exhibit 1.
18. Despite promising to break down the restitution amount from the penalty amount (pursuant to UCA § 78-11-15/16) there was only the plain demand.

#### FIRST CAUSE OF ACTION Slander per se (Kmart)

19. Plaintiff incorporates all previous paragraphs.
20. Kmart accused Plaintiff of a crime (larceny).

21. This accusation was published to employees of Kmart and to others.
22. This accusation was false.
23. Plaintiff has suffered severe emotional distress and pain as a result of this accusation.
24. Plaintiff has suffered financial and marital damage as a result of this accusation.
25. Kmart's accusation was made willfully and maliciously in complete disregard for the truth and Plaintiff's rights.

**SECOND CAUSE OF ACTION**  
Negligent Supervision (Kmart)

26. Plaintiff incorporates all previous paragraphs.
27. Kmart had a duty to Plaintiff to properly supervise its employees.
28. Kmart breached that duty by not properly supervising its employees.
29. Plaintiff was injured by Kmart because of its employees' wrongly accusing her of theft, reporting this to the police, and reporting it to defendants PLA and Farnsworth.

**THIRD CAUSE OF ACTION**  
Multiple violations of FDCPA (PLA and Farnsworth)

30. Plaintiff incorporates all previous paragraphs.
31. Defendants PLA and Farnsworth are regularly engaged in the collection of debts.
32. Defendants PLA and Farnsworth sent Plaintiff a letter (on PLA stationary and signed by Farnsworth) demanding \$4,338.41.
33. They claim that the amount is due as restitution and penalties from alleged theft of consumer items by a consumer.
34. The letter claims that they are able to demand this debt pursuant to Utah law.
35. The Utah law cited (UCA § 78-11-15/16) only allows for recovery in a civil action.

36. Plaintiff has not been served with any civil action concerning the demands in Defendants' letter.
37. The Utah statute cited allows a maximum civil recovery of \$1,500, far less than Defendants demand.
38. The letter threatens actions which, on information and belief, Defendants are unlikely to take, including but not limited to 1) taking further action and seeking a higher amount, 2) Kmart might file suit, 3) service by Sheriff.
39. The letter contains no validation notice.
40. The letter contains no warning that it is for collecting a debt.
41. Based on information and belief, Defendants may report the claimed debt to a credit reporting agency.
42. There is no warning that an adverse credit report may be filed, as required by Utah law.

#### PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court award her statutory, actual, and punitive damages for the complained of acts in an amount to be determined at trial. Plaintiff further prays for attorney's fees as allowed by statute.

#### JURY DEMAND

Plaintiff demands a jury.

Dated this 7 day of December 2004

  
\_\_\_\_\_  
Gregory B. Smith  
Attorney for Plaintiff

Gregory B. Smith #6657  
 Steven C. Russell #6791  
 Attorney for Plaintiffs  
 180 South 300 West #170  
 Salt Lake City, UT 84101  
 Phone # (801) 532-5100

DATE 2 Dec. 04 TIME 9:30 AM  
 FILED 500 W Broadway Bldg  
 UPON E. Sanchez *sgen*  
 CONSTABLE REITZ, SALT LAKE COUNTY, UTAH  
 DEPUTY ✓  
 265-5469

THIRD DISTRICT COURT, COUNTY OF SALT LAKE  
 STATE OF UTAH

<p>Lydia M. Roll,    Plaintiff    vs.    Kmart Holding Corp, a Delaware    corporation; Palmer, Reifler and Associates,    PA, a Florida company    Defendants</p>	<p><b>SUMMONS</b>    Case 040104822    Judge Steven Roth</p>
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THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are summoned and required to answer the attached complaint. Within 20 days after service of this summons, you must file your written answer with the clerk of the court at the following address: West Valley District Court, 3636 Constitution Boulevard, West Valley City, 84119. You must mail or deliver a copy to plaintiff's attorneys at the address listed above. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint. The complaint is on file with the clerk of the court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

Gregory B. Smith  
 Attorney for Plaintiff

K-Mart Corporation  
CT Corp. System  
 50 West Broadway  
 8<sup>th</sup> Floor  
 SLC, UT 84101

West Valley District Court, 3636 Constitution Boulevard, West Valley City, 84119  
 Case 040104822

④  
CT System

**Service of Process Transmittal Form**

Salt Lake City, Utah

12/02/2004

Via Federal Express (2nd Day)

**TO:** James Defebaugh  
Kmart Corporation  
International Headquarters  
3100 West Big Beaver Rd.  
Troy, MI 48084-0000

Kmart CORPORATION

REC'D DEC 8 2004

**RE: PROCESS SERVED IN UTAH**

LEGAL DEPARTMENT

**FOR** K Mart Corporation Domestic State: MI**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

- 1. TITLE OF ACTION:** Lydia M. Roll vs Kmart Holding Corp et al To Include: Kmart Corporation
- 2. DOCUMENT(S) SERVED:** Summons and Complaint
- 3. COURT:** Third District Court, State of Utah, Salt Lake County, Salt Lake Department Case Number 040104822
- 4. NATURE OF ACTION:** Slander per se (kmart)
- 5. ON WHOM PROCESS WAS SERVED:** CT Corporation System, Salt Lake City, Utah
- 6. DATE AND HOUR OF SERVICE:** By Process server on 12/02/2004 at 09:37
- 7. APPEARANCE OR ANSWER DUE:** Within 20 days
- 8. ATTORNEY(S):** George B. Smith  
180 S 300 W #170  
Salt Lake City, UT 84101

**9. REMARKS:****SIGNED** CT Corporation System

**PER** Supervisor of Process /SP  
**ADDRESS** 50 West Broadway  
 Salt Lake City, UT 84101  
 SOP WS 0006B12737

Information contained on this transmittal form is recorded for C T Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

Gregory B. Smith #6657  
Attorney for Plaintiff  
180 South 300 West #170  
Salt Lake City, UT 84101  
Phone # (801) 532-5100

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**THIRD DISTRICT COURT, COUNTY OF SALT LAKE  
STATE OF UTAH**

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<p><b>Lydia M. Roll,</b> Plaintiff  <b>vs.</b>  <b>Kmart Corporation, a Delaware corporation; Palmer, Reifler and Associates, PA, a Florida company;</b> <b>Defendants</b></p>	<p><b>AMENDED COMPLAINT AND JURY DEMAND</b>  Case 040104822  Judge Steven Roth</p>
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**Plaintiff complains as follows:**

**VENUE AND JURISDICTION**

1. Plaintiff is a resident of Salt Lake County, Utah.
2. Defendant Kmart Holding Corp. is a Delaware corporation doing business in Utah as Kmart.
3. Defendant Palmer, Reifler and Associates, PA ("PRA") is a Florida law firm that collects debts in Utah.
4. This Court has personal jurisdiction over the parties.
5. This suit is for state tort claims, state statutory punitive damages, and violations of the federal Fair Debt Collection Practices Act (FDCPA).
6. This Court has subject matter jurisdiction.

**GENERAL ALLEGATIONS**

7. Plaintiff was an employee of defendant Kmart Holding Corp. ("Kmart").
8. Plaintiff is a resident of Salt Lake County, Utah.
9. Defendant Kmart Holding Corp. is a Delaware corporation doing business in Utah as Kmart.

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8. During her employment, Plaintiff would frequently place clearance merchandise on layaway in her name.
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23. Plaintiff has suffered financial and marital damage as a result of this accusation.
24. Kmart's accusation was made willfully and maliciously in complete disregard for the truth and Plaintiff's rights.

**SECOND CAUSE OF ACTION**  
**Negligent Supervision (Kmart)**

25. Plaintiff incorporates all previous paragraphs.
26. Kmart had a duty to Plaintiff to properly supervise its employees.
27. Kmart breached that duty by not properly supervising its employees.
28. Plaintiff was injured by Kmart because of its employees' wrongly accusing her of theft, reporting this to the police, and reporting it to defendants PLA.

**THIRD CAUSE OF ACTION**  
**Multiple violations of FDCPA (PLA)**

29. Plaintiff incorporates all previous paragraphs.
30. Defendants PLA are regularly engaged in the collection of debts.
31. Defendants PLA sent Plaintiff a letter (on PLA stationary) demanding \$4,338.41.
32. They claim that the amount is due as restitution and penalties from alleged theft of consumer items by a consumer.
33. The letter claims that they are able to demand this debt pursuant to Utah law.
34. The Utah law cited (UCA § 78-11-15/16) only allows for recovery in a civil action.
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40. Based on information and belief, Defendants may report the claimed debt to a credit reporting agency.
41. There is no warning that an adverse credit report may be filed, as required by Utah law.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays the Court award her statutory, actual, and punitive damages for the complained of acts in an amount to be determined at trial. Plaintiff further prays for attorney's fees as allowed by statute.

#### **JURY DEMAND**

**Plaintiff demands a jury.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2004

There is no writing on this document which may be used to copy or reproduce it.

**Gregory B. Smith  
Attorney for Plaintiff**

**WHEREUPON**, Plaintiff, prays the Court award her statutory, actual, and punitive damages for the acts described above. Plaintiff further prays that the Court award her attorney's fees and costs of suit, including reasonable expenses, incurred in the preparation and prosecution of this cause of action.